

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CAPELLA PHOTONICS, INC.,

Plaintiff

v.

INFINERA CORPORATION, TELLABS,
INC., TELLABS OPERATIONS INC.,
CORIANT AMERICA INC., and CORIANT
(USA) INC.,

Defendants.

Civ. No. 2:20-cv-00077

**DECLARATION OF JOHN F. GAUSTAD IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OF COLLATERAL
ESTOPPEL ON CERTAIN ISSUES RELATED TO OBVIOUSNESS**

I, John F. Gaustad, hereby declare as follows:

1. I am an attorney at the law firm of Baker Botts L.L.P. and am counsel for Defendants Infinera Corporation, Tellabs, Inc. Tellabs Operations, Inc., Coriant America, Inc., and Coriant (USA), Inc. in this lawsuit. I respectfully submit this declaration in support of Defendants' Motion for Summary Judgment of Collateral Estoppel on Certain Issues Related to Obviousness. I declare that the following statements are true to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances.

2. Attached as **Exhibit 1** hereto is a true and correct copy of U.S. Patent No. RE47,905.

3. Attached as **Exhibit 2** hereto is a true and correct copy of Paper 44, entitled Final Written Decision, from *Cisco Systems, Inc. et al. v. Capella Photonics, Inc.*, IPR2014-01166, Patent RE42,368 (P.T.A.B.), dated January 28, 2016.

4. Attached as **Exhibit 3** hereto is a true and correct copy of Paper 38, entitled Final Written Decision, from *Fujitsu Network Communications, Inc. et al. v. Capella Photonics, Inc.*, IPR2015-00726, Patent RE42,368 (P.T.A.B.), dated September 28, 2016.

5. Attached as **Exhibit 4** hereto is a true and correct copy of Paper 51, entitled Final Written Decision, from *Lumentum Holdings, Inc. et al. v. Capella Photonics, Inc.*, IPR2015-00731, Patent RE42,368 (P.T.A.B.), dated September 29, 2016.

6. Attached as **Exhibit 5** hereto is a true and correct copy of Dkt. No. 81-1, entitled Notice of Entry of Judgment Without Opinion (Feb. 12, 2018), from *Capella Photonics, Inc. v. Cisco Systems, Inc. et al.*, Nos. 2016-2394, 2016-2395, 2017-1105, 2017-1106, 2017-1107, 2017-1108 (Fed. Cir.).

7. Attached as **Exhibit 6** hereto is a true and correct copy of Dkt. No. 88, entitled Mandate (Apr. 16, 2018), from *Capella Photonics, Inc. v. Cisco Systems, Inc. et al.*, Nos. 2016-2394, 2016-2395, 2017-1105, 2017-1106, 2017-1107, 2017-1108 (Fed. Cir.).

8. Attached as **Exhibit 7** hereto is a true and correct copy of Dkt. No. 88, entitled On Petition for Panel Rehearing (Apr. 9, 2018), from *Capella Photonics, Inc. v. Cisco Systems, Inc. et al.*, Nos. 2016-2394, 2016-2395, 2017-1105, 2017-1106, 2017-1107, 2017-1108 (Fed. Cir.).

9. Attached as **Exhibit 8** hereto is a true and correct copy of selected docket entries from from *Capella Photonics, Inc. v. Cisco Systems, Inc. et al.*, No. 16-2394 (S.Ct.), including the Supreme Court's November 5, 2018 order denying Capella's petition for a writ of certiorari.

10. Attached as **Exhibit 9** hereto is a true and correct copy of excerpts from Exhibit Capella 2004, entitled Declaration of Dr. Alexander V. Sergienko in Support of the Patent Owner Response, from *Cisco Systems, Inc. v. Capella Photonics, Inc.*, IPR2014-01166, Patent RE42,368, dated May 7, 2015.

11. Attached as **Exhibit 10** hereto is a true and correct copy of excerpts from Exhibit Capella 2033, entitled Declaration of Dr. Alexander V. Sergienko in Support of the Patent Owner Response, from *Fujitsu Network Commn's, Inc. v. Capella Photonics, Inc.*, IPR2015-00726, Patent RE42,368, dated May 18, 2015.

12. Attached as **Exhibit 11** hereto is a true and correct copy of excerpts from Exhibit Capella 2022, entitled Declaration of Dr. Alexander V. Sergienko in Support of the Patent Owner Response, from *JDS Uniphase Corporation v. Capella Photonics, Inc.*, IPR2015-00731, Patent RE42,368, dated December 1, 2015.

13. Attached as **Exhibit 12** hereto is a true and correct copy of excerpts from the Expert Report of Dr. Alexander V. Sergienko served in the above-captioned case, dated April 5, 2021.

14. Attached as **Exhibit 13** hereto is a true and correct copy of excerpts from the rough transcript of the deposition of Dr. Alexander Vladimir Sergienko, Ph.D. in the above-captioned case, dated April 15, 2021.

15. Attached as **Exhibit 14** hereto is a true and correct copy of Paper 2, entitled Petition for *Inter Partes* Review of U.S. Reissued Patent No. RE42,368, from *Cisco Systems, Inc. et al. v. Capella Photonics, Inc.*, IPR2014-01166, Patent RE42,368 (P.T.A.B.), dated July 15, 2014.

16. Attached as **Exhibit 15** hereto is a true and correct copy of Paper 1, entitled Petition for *Inter Partes* Review of U.S. Patent No. RE42,368 Under 35 U.S.C. §§ 311-319 and 37 C.F.R. §§ 42.1-.80, 42.100-.123, from *Fujitsu Network Communications, Inc. et al. v. Capella Photonics, Inc.*, IPR2015-00726, Patent RE42,368 (P.T.A.B.), dated February 12, 2015.

17. Attached as **Exhibit 16** hereto is a true and correct copy of Paper 1, entitled Petition for *Inter Partes* Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. §§ 42.100 et seq., from

Lumentum Holdings, Inc. et al. v. Capella Photonics, Inc., IPR2015-00731, Patent RE42,368 (P.T.A.B.), dated February 13, 2015.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 26, 2021

Respectfully submitted,

/s/ John F. Gaustad
John F. Gaustad

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on April 26, 2021.

By: /s/ John F. Gaustad
John F. Gaustad